IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 14.11.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

W.P.Nos.25091 to 25094, 24210, 25186-25187,

25188-25189, 25098-25099, 25100-25101,

25102-25103 & 25104-25105 of 2006

& W.P.M.P.Nos.1, 2 & 3 of 2006

P.Sivasankaran ... Petitioner in W.P.No.24210/06
D.Krishnan ... Petitioner in W.P.No.25100/06
K.Mohan ... Petitioner in W.P.No.25091/06
V.Appukuttan ... Petitioner in W.P.No.25093/06
G.Haribabu ... Petitioner in W.P.No.25098/06
C.Rajendran ... Petitioner in W.P.No.25102/06
K.M.Sankarankutty ... Petitioner in W.P.No.25104/06
T.M.Sureshbabu ... Petitioner in W.P.No.25186/06
Sheilla Sathiavathy ... Petitioner in W.P.No.25188/06

K.Mohan ... Petitioner in W.P.No.25092/06
V.Appukuttan ... Petitioner in W.P.No.25094/06
G.Haribabu ... Petitioner in W.P.No.25099/06
D.Krishnan ... Petitioner in W.P.No.25101/06
C.Rajendran ... Petitioner in W.P.No.25103/06
K.M.Sankarankutty ... Petitioner in W.P.No.25105/06
T.M.Sureshbabu ... Petitioner in W.P.No.25187/06
Sheila Sathiavathy ... Petitioner in W.P.No.25189/06

Vs.

1. The Secretary,
The Railway Employees' Cooperative
Credit Society Ltd.,
Ashok Vihar Complex,
Old Zoo Road,
Chennai 3.

2. The Trustees
Staff Retirement Benefit Fund,
The Railway Employees Cooperative
Credit Society Ltd.,
Southern Railway Office,
Chennai 600 003.

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3. The Joint Registrar of Cooperative Societies,
91, St. Mary's Road,
Abiramapuram, Chennai 600 018.

4. The Central Registrar,
Ministry of Agriculture and Cooperation,
Krishi Bhavan, New Delhi 110 001.
... Respondents in all the W.Ps.

PRAYER in W.P.Nos.24210, 25100, 25091, 25093, 25098, 25102, 25104, 25186, 25188: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Declaration, declaring the Board of Management Resolution dated 15.12.2004 of the I and II respondents as illegal and unjust to in so far as the resolution ratifies the decision to wind up the Staff Retirement Benefit Fund Scheme and to direct the respondents to continue to pay pension financial assistance to the petitioners.

PRAYER in W.P.Nos.25092, 25094, 25099, 25101, 25103, 25105, 25187, 25189: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Declaration, declaring the amendment dated 15.12.2004 to section 5(b) and 5(c) of the subsidiary regulations of the Revised Voluntary Retirement Benefit Scheme 2004 in so far as it seeks to deny the benefits under the Staff Retirement Benefit Fund Scheme as illegal and to direct the respondents to continue to pay pension/financial assistance to the petitioner without reference to the enhanced compensation paid under the Revised Voluntary Retirement Benefit Scheme 2004.

Petitioners	:	Ms.R.Vaigai, S.C. for M/s.D.Nagasaila
Respondents 1 and 2	:	Mr.R.Muthukumarasamy,S.C. for Mr.A.Jinasenan

In all these writ petitions, the resolution of the board of Management dated 15.12.2004 of the Railways Employees Cooperative Credit Society Ltd, in ratifying the approval accorded by the Chairman of the Society, in accordance with the recommendations of the subcommittee going into the demands of staff union, winding up of Staff Retirement Benefit Fund Scheme and enhancement of compensation payable to V.R.S. optees is in question by way of declaration, as it is illegal and for a direction to continue to pay pension financial assistance to the petitioners.

2. The petitioners are working as adhoc Clerks in the Railway Employees Cooperative Credit Society Ltd., and put in substantial years of service and having more years of service. The Railway Employees Cooperative Credit Society by a circular dated 29.01.1991 has introduced a pension scheme to the staffs of the society. According to the said scheme, the employees having service upto 10 years and below are to contribute monthly contribution at the rate of 3% of their basic pay. In respect of employees, having service of more than 10 years for retirement, the

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contribution fixed at 2% of basic pay and the contribution to be effected commencing February 1991 salary of all the staffs and the pension scheme was to be operative from 01.07.1987. The petitioners who are having more than 10 years of service have contributed at the rate of 2%, as per the scheme, from the year 1991. In the year 1998, the contribution was increased by 1% and the increased contribution has also been paid.

3. By a circular dated 08.03.2001, the employees were informed that the board of management has decided to club the staff recruitment board fund with Life Insurance Corporation of India as a permanent measure. As per the circular, those staffs having more than 10 years of service remaining as on 01.03.2001 were directed to contribute a subscription of 5% of basic pay and those staffs less than 10 years of service to contribute 10% of basic pay towards Staff Recruitment Board Fund. The management was to contribute the equal amount for every staffs towards premium payment for L.I.C. for grant of pension to the retired employees through L.I.C. and that was commenced from 01.04.2001. The enhanced contribution as per the scheme was also deducted from the salary of the petitioners with effect from March 2001 but the deduction at 6% per month instead of 5% as per the circular dated 08.03.2001. It was informed that L.I.C. pension scheme is more beneficial. The petitioners believed the same and the said revised scheme was agreed. A voluntary retirement scheme was announced by the circular dated 29.01.1999 under which, an employee who was put in 20 years of continuous service in the society were eligible to opt for the said V.R.S. scheme. Since originally, there was a ceiling of 2.5 lakhs for the persons who opted V.R.S. and there was no much response, the said ceiling was removed. It was in those circumstances, many of the employees have opted for the said scheme and it was also informed that if not, the scheme opted, the management may be forced to either wind up the society itself or to proceed with the other methods.

4. When the object of the scheme was to reduce the work force, contrary to that, the management has started recruitment of new employees in large numbers. The persons like petitioners who have not originally opted for the said V.R.S. scheme were compelled to accept the scheme by threat of being sent out of job and accordingly, the petitioners have signed the same.

5. It is the case of the petitioners that after signing the V.R.S. letter, the petitioners were permitted to copy the letter hurriedly even though they had no English knowledge. The petitioners were made to retire on 30.09.2005. Now, the petitioners' understand that the L.I.C. pension scheme has not been finalized between the first respondent and L.I.C.. Deharse the said scheme, the petitioners will be entitled for pension as per Staff Retirement Benefit Funds Scheme. However, the petitioners were informed that they were not entitled for the pension as under the V.R.S scheme, the petitioners have given up their claim of pension.

6. The petitioners' understand that since 1999 over 150 employees have been forced to opt the V.R.S. scheme. After V.R.S., the management is

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making fresh appointment in large scale, contrary to the stand that the V.R.S. itself was to reduce the staff strength. The petitioners also state that at least 4 persons R.Nagaraj Rao, V.Sathyanarayana, T.M.Ramakrishnan and G.Krishnasamy who have retired even before the pension scheme was introduced and who have not contributed anything towards the scheme, are paid pension, which is denied to the petitioners, who have contributed to the scheme. The petitioners who have retired after the introduction of the L.I.C. scheme namely after 01.04.2001 are entitled for pension at Rs.3,500/- per month and the same has been denied. When the petitioners filed the Writ Petitions in January 2006 praying for payment of pension under L.I.C. scheme and after receipt of notice from this Court, by a letter dated 01.02.2006 issued by the first respondent, the first respondents has directed petitioners' to express willingness to join duty within 7 days and in the event of giving such willingness to arrange to remit the amount received to the society within 15 days. Since anticipating that as it has happened in respect of some other employees case who were dismissed from service, the same will be followed in the petitioners' case also, the petitioners have replied, stating that they are not willing to join.

7. It is stated in the counter affidavit filed by the first respondent in the said writ petitions, as if the petitioners have accepted that as serving employees who opted for retirement they are not entitled for pension under Staff Recruitment Benefit Fund Scheme. It was also stated by the first respondent society that the society was offering refund of contribution made from February 2005 to September 2005 and send the same and the same has not been encased by the petitioners.

8. According to the petitioners, as per the bye law of the Railway Employees Cooperative Credit Society Ltd., for the Staff Recruitment Benefit Fund, equal contribution is made by the society and the board of management and the fund is managed by a separate committee. Even though, in the committee the representatives of the employees are also to participate, the management of the funds of the scheme has been kept in total darkness and the petitioners learnt that there has been a total darkness. The petitioners also learn that the management passed resolution on 15.12.2004 to wind up Staff Recruitment Benefit Fund about which nothing was disclosed to the petitioners till date. The impugned resolution of the management of the first respondent is challenged on various legal grounds including that the same is in violation of Article 14, 15, 16, 21 and 29 of the Constitution of India. That apart, the first respondent having received the contribution of the petitioners towards the pension scheme cannot go back from the proposal of pension and the same amounts breach of trust. The first respondent has a legal duty to pay pension to the retired employees especially when the contribution has been deducted from the salary of the petitioners under the pension scheme. The third respondent has a legal duty to see that the first respondent performs the legal function in a proper manner. When all the employees who contributed under the scheme are getting pension, the same is denied to the petitioners. The impugned resolution has been challenged as violative of

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Article 21 of the Constitution of India. It is also the case of the petitioners that as per the bye law of the society, the Staff Retirement Benefit Fund can not be unilaterally wound up. The amendments to the bye law can be done only in the manner known to law under the Multi State Cooperative Societies Act, 2002. Alteration in respect of payment of pension without proper notice is violative of Section 9(A) of the Industrial Disputes Act, apart from many other legal contentions.

9. The first respondent has filed counter affidavit. While admitting that the first respondent is a Multi State Cooperative Society, deemed to have been registered under the Multi State Cooperative Societies Act, 2002, the first respondent states that the petitioners have voluntarily retired from service with effect from 13.09.2005. It is true that in the year 1991, the staff retirement benefit fund scheme was evolved by the society and the contribution were deducted from the employees salary and also contribution made by the management. It is the case of the first respondent that the payment of monthly financial assistants under the scheme is not akin to monthly pension. It was only a welfare measure and not a statutory obligation.

10. According to the first respondent, the payment of monthly financial assistants under the staff retirement benefit fund scheme does not mean a statutory right. The employees are governed by the Employees Provident and Miscellaneous Provisions Act 1952, especially, Section 6 of the said Act, which contemplates the contribution by the employer to a percentage and the same is remitted by the society to the Employees Pension Fund and the Staff Retirement Benefit Fund Scheme. It is not a statutory scheme and is only a welfare measure and the continuance of the scheme depends upon the quantum of amount received. It was on the basis of the representation of the employees serving the society through their union that the Staff Retirement Benefit Fund Scheme is not beneficial to them and therefore, requesting for stoppage of the recovery from their salary and also requested for enhancement of compensation payable to the future V.R.S. optees and it was based on the said demand, which was made by the majority staff union, it was specifically agreed by the union and the management that if the contribution of employees towards Staff Retirement Benefit Fund Scheme is stopped it will not be possible for payment of monthly financial assistance and it was agreed that such of those persons who retired either superannuation or V.R.S. are not eligible for the said financial assistance. The recommendation of the committee to that effect was considered by the board of management of the first respondent and the same was accepted and accordingly the scheme was scrapped and the compensation payable to the future V.R.S. optees were enhanced and it was decided to stop deduction towards Staff Retirement Benefit Fund scheme from January 2006. Therefore, persons who have retired before the said date of scrapping of the scheme alone were made eligible for the monthly financial assistance and not others.

11. It is also the case of the first respondent that even in respect of persons who have already retired earlier and who were in receipt of the

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monthly financial assistance under the Staff Retirement Benefit Fund scheme, out of 174, 119 of them have accepted the offer of the first respondent to receive one lumpsum grant in lieu of monthly financial assistance and the remaining 54 persons out of whom one died have not accepted. The petitioners are among the said 53 employees, who sought for voluntary retirement under the scheme which was scrapped.

12. It is also the case of the first respondent that the petitioners are one of the signatories to the memorandum dated 18.11.2004 submitted to the management for scrapping the Staff Retirement Benefit Fund scheme and under the memorandum, it was specifically expressed that in the applications it was specifically agreed by the petitioners that they are not entitled for financial assistance. By accepting the enhanced benefit under the revised voluntary retirement scheme, the petitioners having given such undertaking cannot now go back. It was only taking into account of all the situations, the management has accepted the claim of the petitioners and granted enhanced V.R.S. besides other terminal benefits and relieving them from service in September 2005. It was only after accepting the same they have filed the earlier writ petitions seeking for financial assistance and there has been no interim order and thereafter, the very same petitioners have filed the present writ petitions.

13. According to the first respondent, as per the minutes of meeting of the management and staff union it will be seen that the majority of the employees of the society wanted the scrapping of the Staff Retirement Benefit Fund scheme. It is also denied by the first respondent that the petitioners were not aware of the contents of the letters written by them. As far as the allegation in the Writ Petition that the petitioners were not even allowed to read and understand and the same was in English which language the petitioners were not aware, the first respondent would submit that the petitioners have submitted more than 6 different letters in English in their own hand writing seeking for various payments due to them and therefore, it is false to say as if, they were unable to understand the English language.

14. It is also the case of the first respondent that there was no possibility of formation of L.I.C. trust, since the scheme did not materialize and the L.I.C. did not agree to the offer of pension to voluntary retired employees. In fact, the first respondent management has filed writ petitions for refund of initial deposits made to L.I.C. It is also denied that several persons were paid financial assistance under different scheme.

15. It is also the case of the first respondent that in respect of the petitioners in the previous Writ Petition in W.P.No.13006 to 13018 of 2002, who sought for pension from the L.I.C. scheme, which has not materialized and therefore, the respondents have agreed to pay them under the Staff Retirement Benefit Fund scheme. It is the case of the first respondent that the management has not given any complement for the purpose of granting such memorandum.

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16. On the other hand, it is the staff union which has given a written request to stop deduction from the salary towards Staff Retirement Benefit Fund and for scrapping this scheme and enhanced payment to the compensation under the V.R.S. optees. It is denied that the first respondent is in the habit getting signature in the blank papers. In respect of the knowledge about the contents of the memorandum, when the same was raised in the earlier writ petition, the first respondent management wanted to know from the General Secretary of the staff union, whether the petitioners were aware, to which the General Secretary of the staff union produced letters, singed by few employees along with the petitioners and therefore, it is not correct to state that the petitioners were not aware of the memorandum.

17. It is also the case of the first respondent that in fact the petitioners have in their own handwriting, accepted that they are not eligible for payment of monthly financial assistance under Staff Retirement Benefit Fund scheme. The first respondent also would submit that while contribution made by the petitioners from 1991 to January 2005 where much less than enhanced compensation paid to the petitioners under the revised voluntary retirement scheme on account of scrapping of Staff Retirement Benefit Fund scheme which would evidently show that the petitioners have received much more than what they have actual contributed towards fund. By circular dated 17.12.2004 the scrapping of the scheme as well as the payment of enhanced compensation under the V.R.S. optees has been informed. It was also specifically agreed in the meeting of the staff union held on 29.11.2004 that when once the Staff Retirement Benefit Fund scheme scrapped and the existing employees either go on retirement normally or under the V.R.S. scheme will not be paid financial assistance. The committee constituted to study the demand of the staff union has in fact recommended to increase the compensation payable from 15 days wages for every month to that of the 20 days wages for every month by way of amending the Subsidiary Rule 5(b) and 5(c) of the Revised Voluntary Retirement Benefit Fund Scheme 2004. The board resolution dated 15.12.2004 which is impugned was only after accepting the recommendation of sub committee formed to consider the demands of the staff union and consequently, the circular dated 17.12.2004 was issued amending 5(b) and 5(c) of the Revised Voluntary Benefit Scheme Rules by increasing the quantum of compensation from 15 days wages per month to 20 days wages per month, on account of scrapping of Staff Retirement Benefit Fund scheme and the said enhancement was given to the employees who opted for Voluntary Retirement with effect from February 2005. The enhancement of V.R.S. compensation and scrapping of benefit under Staff Retirement Benefit Fund scheme were interconnected as evidenced from the impugned resolution of the first respondent dated 15.12.2004 and therefore, it is not correct to state that the winding up of the Staff Retirement Benefit Fund scheme is distinct from V.R.S. compensation. The first respondent has denied the legal ground raised by the petitioners.

18. It is also the case of the first respondent that the Industrial Dispute Act has no application since the first resopndent governed by the Multi State Cooperative Societies Act. It is also the case of the first

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respondent that the amendment to the provision of Rule 5(b) and 5(c) of the Revised Voluntary Benefit scheme enhancing the compensation was made at the request of the employees which includes the petitioners. It is also the case of the first respondent that the board of management was entitled as per law to modify, amend or alter or revoke any of the existing rules or scheme and the modification made by the first respondent is in accordance with the subsidiary regulation number 8(a) of the Staff Retirement Benefit Fund rules and bye law number 70 of the society bye law itself.

19. It is also the case of the first respondent that the petitioners have already approached this Court for a direction to pay the financial assistance as per the Staff Retirement Benefit Fund scheme and suppressing the same, the present writ petitions are filed. It is also the first respondent's case that a reference to the typed set of papers would reveal that the amounts paid to the petitioners under various heads which includes the additional amounts paid and enhanced compensation on account of V.R.S. are much more than the compensation payable under normal V.R.S. scheme which was existing prior to the winding up of Staff Retirement Benefit Fund scheme. It is also the case of the first respondent that the accounts regarding erstwhile Staff Retirement Benefit Fund scheme was maintained properly with proper auditing and participation of the workers in the management of the respondent and in view of the same the first respondent pleads for dismissal of the writ petition.

20. Ms.R.Vaigai learned counsel appearing for the petitioner would submit that inasmuch as the first respondent society is governed by the provisions of the Multi State Cooperative Societies Act, 2002, any bye law framed as per the said Act can be only amended or modified in accordance with that Act. In the present case, the impugned resolution of the board of management dated 15.12.2004, by which, there was a ratification of approval accorded to the decision the Chairman of the Society in accepting the recommendations of the sub committee to go into the demands of the staff union regarding the deduction to Staff Retirement Benefit Fund scheme, winding up of the Staff Retirement Benefit Fund scheme and enhancement of compensation payable to V.R.S. optees is against the bye law of the society, especially, bye law no. 70, under which, the Staff Retirement Benefit Fund was created and the same cannot be unilaterally wound up on the basis of the resolution of the Board of Directors.

21. It is also her contention that the bye laws which are prepared as per the provisions of the Multi State Cooperative Societies Act 2002, can be amended as per Section 11 only on resolution passed in the general meeting of the society in which 2/3 majority of the members are present and voting and such amendment has to be registered and the effect of the amendment will be operative only for a registration under Section 12 of the said Act. According to her, in the present case, there was no amendment to the bye law and such amendment has not been brought in the general body and the same was not registered and therefore, the impugned resolution dated 15.12.2004 is not valid. She would also submit that the amendments sought to be made governing the scheme of Revised Voluntary Retirement Benefit

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scheme 2004, by granting 20 days wages for every month of residual service instead of for 15 days for fixing quantum of compensation is also not in accordance with law. It is also her contention that when once the Staff Retirement Benefit Fund scheme which came into force by way of rule from 1991, namely, the Railway Employees Cooperative Credit Society Staff Retirement Benefit Fund Rule 1991, under which the contribution has been made from the employees salaries, it is not open to the first respondent to close the scheme in the guise of providing better benefit by Voluntary Retirement Scheme. Inasmuch as it is a contributory fund from the employees, there was no question of scrapping the said scheme, since according to the learned counsel the term amendment or modification does not mean that the first respondent is empowered to scrape the scheme.

22. It is also her contention that merely because the bye law 57(6) provides for carrying forward to the credit of Voluntary Retirement Benefit Fund, in respect of the balance amount, subject to the framing of the subsidiary regulation by the Board of Directors does not mean that the Staff Retirement Benefit Fund created as per bye law No.70 can be scrapped by the board resolution. Since the petitioners have been under employment even before the impugned amendment is sought to be introduced and contribution amount has been deducted from their salary under Staff Retirement Benefit Fund and in addition to the deduction from the salary of the petitioners, as per subsidiary rules, especially rule No.6, which speaks about the constitution of the fund, the management is to contribute the percentage as decided from the net profit of the society every year and that obligation cannot be taken away by scrapping the scheme.

23. The learned counsel would also submit that the Staff Retirement Benefit Fund is a statutory guarantee given to the employees like that of the petitioners who have contributed under the scheme and therefore, the petitioners have an accrued right and the impugned amendment by way of resolution is not statutory in its character. She would further contend that inasmuch as, the amounts have been deducted from the salary of the petitioners under the Staff Retirement Benefit Fund scheme till date of the obtaining of signature in the V.R.S. scheme the benefit which has accrued by virtue of bye law No.70 in the form of the Staff Retirement Benefit Fund scheme cannot be taken away retrospectively. She would also rely upon the judgement of the Hon'ble Apex Court reported in AIR 1996 SC (2776), to substantiate her contention that inasmuch as the petitioners are already in service and the Staff Retirement Benefit Fund scheme has already been implemented and the amounts have recovered from their salary, even assuming otherwise, any amendment brought in on 15.12.2004 can only be prospective and cannot be applicable to the petitioners who are already in service on date when the scheme was introduced and the amounts have been recovered and according to her, if at all there is any lawful nature of the same, it can be applied only to those persons who were appointed after the date of amendment. In the present case, the petitioners are all in service even before the date of amendment namely before 2004 and therefore, the amendment cannot made be applicable.

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24. The learned counsel would also rely upon the judgement of the Hon'ble Apex Court reported in AIR 1981 SC (1829) to substantiate her contention that since, the right under the scheme has already accrued on the petitioners, simply because the letter has been obtained under the V.R.S. scheme, it cannot be treated a waiver of the said right which has accrued.

25. The learned counsel also placed reliance on another judgement of the Hon'ble Apex Court reported in AIR 1970 SC(245) to show that when as per the bye law 70, the Staff Retirement Benefit Fund was framed, it also act as a contractual obligation between the parties and the conditions laid down under the bye law are to be treated as conditions accepted by the parties binding upon both and that cannot be unilaterally modified.

26. On the other hand, Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the first respondent would submit that in the year 1981, there was a fund called shareholders and staff welfare fund as per bye law No.60 which also provided a scope for framing of a subsidiary rules and pension scheme was introduced in the year 1991 and the said Railway Employees Cooperative Credit Societies Staff Retirement Benefit Fund rules, which was given effect to from 01.07.1987 was not having any legal backing because it was only the decision of Staff Welfare Fund Committee to constitute a pension scheme and the financial assistant contemplated under the scheme was not having any legal sanction.

27. According to the learned Senior Counsel, when the recovery of 2% of the basic pay from the employees having more than 10 years of service was made in 1999, there was no byelaw. According to him, the bye law No.70 was introduced by the General Body as on 25.06.2002 and it was based on the said byelaw, the subsidiary rules were framed on 31.07.2002 and the implementation was effective on day to day basis. The learned Senior Counsel would submit that as per the subsidiary rule, which was having statuary force, especially, under Rule 8, the board of management was empowered to frame additional rules for administration of the funds, apart from, modifying, extending, altering or revoking any of the existing rules or scheme in consultation with the Staff Union.

28. The learned Senior Counsel would submit that the members of the Staff Union numbering around 500 by their letter dated 05.11.2004 have in fact demanded for stoppage of recovery towards the Staff Retirement Benefit Fund scheme from the serving employees and it was based on the representation of the said Railway Employees Cooperative Bank Staff Union, a subcommittee was constituted along with the members of the staff union which has decided in the meeting held on 17.11.2004 for stoppage of recoveries under the Staff Retirement Benefit Fund scheme and therefore, the existing serving employees who either go on V.R.S. or Superannuation will not be entitled for monthly financial assistance and it was in those circumstances, the compensation payable to the future V.R.S. optees was directed to be enhanced by the management. According to the learned Senior Counsel, it was after considering the said representation and the minutes

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of the meeting and signed by many of the staff and after detailed deliberation by the participation of the large number of union members, the impugned resolution came to be passed and the amendment to the subsidiary regulations governing the Revised Voluntary Retirement Benefit Fund scheme 2004 have been approved by the board of management on 15.12.2004 by which, in fact, the amount of compensation has been enhanced.

29. The learned Senior Counsel would also submit that in fact, based on the said amendment, huge amount of compensation has been paid in respect of a person who was otherwise eligible for 7.5 lakhs, has been paid 11 lakhs and like that there are many instances and the said amendment was operative from February 2005. The learned Senior Counsel would submit that after February 2005, there was no recovery under the scheme from the employees' salary. However, the contribution defectively collected till October 2005, have been subsequently refunded to the concerned employees and they got the enhanced amount of compensation as per the amended scheme. It is also the submission of the learned Senior Counsel for the first respondent that in September 2005, 9 staffs have retired who got the benefit and comparison would show that they have received a very huge financial assistance. Many of the employees have accepted the Voluntary Retirement Scheme and received a very huge amount.

30. The learned Senior Counsel would also submit that Section 11 of the Multi State Cooperative Societies Act 2002, will apply only in cases where byelaws were framed. In the present case there was no byelaw legally framed, at the time when Staff Retirement Benefit Fund scheme was introduced and therefore, there was no question of applicability of the Act.

31. By meeting, the contention of the learned counsel for the petitioner that the resolution is illegal, since the byelaw has not been amended in accordance with the provisions of the Act, the learned Senior Counsel would submit that the impugned resolution was passed based on the powers conferred on the Board of Directors as per the subsidiary regulations framed. In fact, it was in furtherance of the enabling powers, the subsidiary regulations were framed on 31.07.2002, under which, the Board of Management was competent to frame additional rules or regulations, in respect of administration of fund and also to modify, extend, alter or revoke any of the rules or scheme in consultation with the Staff Union. Therefore, according to the learned Senior Counsel, it was pursuant to the said subsidiary rules the Board of Management which is competent has held wide consultations with the Staff Union and it was only thereafter, the impugned resolution came to be passed. According to the learned Senior Counsel, it was only an additional financial scheme. Mere mentioning byelaw No.70 does not taken away the powers of the Board, as per the subsidiary rules and in fact, according to the learned Senior Counsel, 119 workers has got lump sum.

32. The learned Senior Counsel, while meeting the arguments in respect

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of the retrospective effect of the scheme would submit, placing reliance on the judgement of the Hon'ble Apex Court reported in 1997 6 SCC (623), in which, the retrospective effect must be taken on the date of retirement and it cannot be said that the scheme itself will be applicable only to the persons who are appointed only from the date of the scheme, which has been given retrospective effect.

33. The learned Senior Counsel would also rely upon another judgement of the Hon'ble Apex Court reported 1992 Suppl.(1) SCC (191) to substantiate his contention that the resolution is applicable to all the persons in service who have retired on the date of resolution. In respect of the plea about the waiver, the learned Senior Counsel would submit placing reliance on the judgement reported 2004 (13) SCC (792) that the existing rights can always be given up and in the present case, there was an intentional relinquishment after knowing the legal rights, especially, in the circumstance that the benefits given under the Revised scheme, is very huge by way of a compensation. According to the learned Senior Counsel, even assuming otherwise, the Staff Retirement Benefit Fund scheme was not having any statutory force and there was no legal right in existence, after the subsidiary rule have been framed having statutory character with enabling powers to the Board of Management. He also would submit by referring to the various documents in the typed set of papers that the employees have signed in their own hand and the letters have been written and therefore, on the principle of estoppel, the petitioners are prevented from raising the issue once again.

34. The learned Senior Counsel also would rely upon the judgement of the Hon'ble Apex Court reported in AIR 1971 SC(2213) to strengthen his contention that the legal rights can always been waived and it is fundamental rights which cannot be waived. The learned Senior Counsel also would submit that a reference to the contents of the letters written by the petitioners and other staffs would show that it is totally false to state that the petitioners do not know English, as if, the scheme has been thrusted on them by force. The learned Senior Counsel also would submit that the petitioners have retired in September 2005. After 10 months only in June 2006, the petitioners have chosen to file the Writ Petition.

35. Ms.Vaigai by way of reply would submit that this is a case, the Staff Retirement Benefit Fund Scheme is a scheme by a voluntary contribution and contributions have been received from the employees and the byelaw No.70 does not authorize scrapping of the fund till the said byelaw is amended in the manner know to law. According to her, the Subsidiary Rule 8(a) cannot go beyond the byelaw No.70. The first respondent has no authority to issue a circular dated 17.12.2004. According to the learned counsel, the refund of the amounts stated to have been returned, has not been accepted by the petitioners and therefore, there was no question of waiver. The representations itself were given in the atmosphere of threat of dismissal and therefore, it cannot be said to be voluntary. She would also rely upon the judgement of the Hon'ble Apex Court reported in 1981 (3) SCC 493, to the effect that there cannot be a

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circular over riding the byelaw.

36. I have heard the learned counsel for the petitioners and the learned Senior Counsel appearing for the first respondent apart from the Government Advocate who have taken notice on behalf of the third respondent and perused the entire records.

37. The question that it is involved in these cases is as to whether the resolution stated to have been passed by the Board of Management on 15.12.2004, by scrapping the Staff Retirement Benefit Fund scheme and by amending the subsidiary regulations by introducing a Revised Voluntary Retirement Benefit Scheme 2004, providing enhancement of compensation payable to V.R.S. optees is valid or not. It is seen that two sets of Writ Petitions have been filed one for declaration that scrapping of the Staff Retirement Benefit Fund Scheme is illegal and also for a direction to continue to pay financial assistance to the petitioners under the Staff Retirement Benefit Fund Scheme and another for a continuation of Staff Retirement Benefit Fund scheme without reference to the enhanced compensation under the V.R.S. Scheme 2004. To decide about the validity of the said resolution and also the amendment made to the subsidiary rules, it is necessary to point out the nature and legal status of the Staff Retirement Benefit Fund Scheme as originally framed. One factual aspect which has to be admitted in these cases are that the Multi State Cooperative Societies Act 2002, which is applicable to the first respondent came into force, as per the Central Government notification on 16.08.2002 and it was after the scraping of the earlier Act. It is also not denied that there was a shareholder and Staff Welfare fund started in 1981, as per the byelaw 60 of the Railway Employees Cooperative Credit Society Ltd., with the following objects namely,

> "(2) OBJECTS : The objects of the fund shall be:-
>
> (i) Education of Children.
>
> (ii) Treatment for Cancer and Tuberculosis and Reservation of beds in Hospitals and Sanatoria for the same.
>
> (iii) Provision of Holiday Convalescent homes and any other schemes for the Welfare of the staff and the members of the Society as may be decided by the Managing Committee of the fund from time to time.
>
> (3) BENEFICIARIES: All the members and the paid employees' of the Society and their families will be eligible for financial assistance from the Welfare Fund."

38. The said fund also constitutes the management of the fund with the following persons as per Rule 4, which runs as follows:

> "(4) MANAGEMENT OF THE FUND: The Management of the Fund shall vest in a committee consisting of:
>
> (a) A Chairman to be nominated by the General Manager.

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(b) Three members to be nominated by the Board of Directors of the Society.

(c) One member elected from among the Share Holders at the Representative Assembly General Meeting of the Society.

(d) One member elected by the employees of the society from among themselves and

(e) The Secretary of the Society who shall be Ex-Officio member-Secretary of the Fund."

39. The framing of the subsidiary rules are entrusted with the said committee of management as it is seen in Rule 6, which runs as follows:

"(6) Framing of Subsidiary Rules:

The amount to the credit of the Fund shall be utilized for any or all of the objects mentioned in Rule (2). The Committee of management of the Fund shall be competent to frame detailed subsidiary rules for schemes of assistance from the Welfare Fund for the benefit of the members and the paid staff of the Society having regard to the provisions of any extent rules of assistance available on the Railways. Such subsidiary rules shall be communicated to the General Manager for his information."

40. It appears that the shareholders and staff welfare committee constituted as per the above said fund, has decided in 1990 to implement a pension scheme to the staffs of the society with effect from 01.02.1991, by way of contribution to the pension scheme.

41. Accordingly, "the Railway Employees Cooperative Credit Societies Staff Retirement Benefit Fund Rule 1991" was framed which has come into effect from 1st February 1991, which is called S.R.B.F. Rule (Staff Retirement Benefit Fund Rule) with the main object to provide financial benefit to those who retired from service either on attainment of superannuation or Voluntary Retirement or medically decategorized staffs and to provide income to the employees to pass on the rest of their old age after retirement and it also provides financial benefits to their family members. The said rule, which are contributory in nature contemplated contribution of 3% of the basic pay for the employees having services upto 10 years and below for retirement and 2% in respect of employees having service more than 10 years for retirement and the contribution effected from February 1991 on monthly basis.

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42. Therefore, at the time, when the said scheme was introduced, there is no difficulty to come to the conclusion that the scheme was not statutory in nature and it was purely contractual. It is also seen that there was a Voluntary Retirement Benefit Fund created in 1998, by way of subsidiary regulation proposed by the Board of Directors, stated to have been framed as per the byelaws. It is also seen that the shareholders and Staff Welfare Fund, was not framed as per the provisions of the Multi State Cooperative Societies Act 1984, and even the subsequent rules namely the

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Railway Employees Cooperative Credit Societies Staff Retirement Benefit Fund Rule 1991, has also not been framed as per the said Act 1948, and therefore, there was no statutory sanction. Even in respect of the subsidiary rules stated as Staff Voluntary Retirement Benefit Fund, there is nothing to show that the same has been framed as per the said Act. However, it provides for a constitution of a fund where by, the management committee is empowered to decide the percentage of profit to be contributed from the net profit of the society every year. That apart, the said rule also contemplate the payment of compensation stating that the said compensation payable is in addition to the actual terminal benefits, admissible proportionately to the qualifying service rendered by the employees.

43. The said subsidiary rule in Rule 5 stood as follows:

" 5) The quantum of compensation shall be :-

(a) Actual basic pay + Dearness Allowance x 15 day wages per month x 5 year weightage period.

(b) Actual gratuity payable as per payment of gratuity Act 1972.

(c) 3 months Ex-gratia in lieu of notice period.

Note: The above said compensation shall be payable in addition to the actual terminal benefits admissible proportionately to the qualifying service rendered by the employee."

44. It is this subsidiary rule relating to the Voluntary Retirement Benefit Fund, which was sought to be amended in the name of "Revised Voluntary Retirement Benefit Scheme 2004", by approval of the Board of Management in the meeting held on 15.12.2004. Even before this amendment, under which the compensation amount was increased in lieu of the Voluntary Retirement Scheme, there has been amendment to the said subsidiary Rule, by the resolution of the Board of Management dated 30.11.1998 by which, the Rule No.5 was made as follows:

" 5) The quantum of compensation shall be:-

a) Actual basic pay + Dearness Allowance x 15 day wages per month x 5 year weightage period.

b) Actual gratuity payable as per payment of gratuity Act 1971.

c) 3 months Ex-gratia in lieu of notice period.

Note: The above said compensation shall be payable in addition to the actual terminal benefits admissible proportionately to the qualifying service rendered by the employee."

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45. Further, by approval of the Board of Management in the meeting held on 13.07.2004 subsidiary regulations appear to have been made governing the scheme of Revised Voluntary Retirement Benefit Scheme 2004, in which the utilization of fund was mentioned in Rule 5, which runs as follows:

" 5) Utilization of the fund:

The "Fund" shall be utilized in the manner and procedure as prescribed hereunder:

a) The "Fund" shall be utilized to offer appropriate retirement benefits to the eligible employees / officers whose option for voluntary retirement from services is accepted by the competent authority.

b) The maximum amount of compensation that shall be payable to an employee / officer shall be subject a maximum of

Such of those employees / officers in scale of pay	Maximum amount of compensation admissible to employee/Officer
2550-3200	2 lakhs
2610-3540	
2650-4000	
2750-4400	
3050-4590	
4000-6000	3.25 Lakhs
5000-8000	4.00 Lakhs
5500-9000	4.50 Lakhs
6500-10500	5.50 Lakhs
8000-13500	6.50 Lakhs
14300-18300	7.50 Lakhs

c) The quantum of compensation payable to each employee / officer under this scheme shall be 15 days wages for every month of residual service available to such an employee / officer in reaching his / her superannuation in the services of the Society, subject to a ceiling limit of sixty months of residual service or the actual service shall available to him/her and which ever is lower.

d) The Board of Management at its discretion may grant an out of turn promotion to the next higher grade to such an employee / officer who seek voluntary retirement from the services of the Society."

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46. It is the said Rule 5(b) and 5(c) of the said Revised Voluntary Retirement Benefit Scheme 2004, which was sought to be amended by the resolution of the Board of Management dated 15.12.2004 as follows:

<table>
<tr><td colspan="2">Existing</td><td colspan="2">Proposed</td></tr>
<tr><td colspan="2">(5)(b) The maximum amount of compensation that shall be payable to an employee / officer shall be subject a maximum of</td><td colspan="2">(5) (b) The maximum amount of compensation that shall be payable to an employee / officer shall be subject a maximum of</td></tr>
<tr><td>Such of those employees / officers in scale of pay</td><td>Maximum amount of compensation admissible to employee / officer</td><td>Such of those employees / officers in scale of pay</td><td>Maximum amount of compensation admissible to employee / officer</td></tr>
<tr><td>2610-3540</td><td rowspan="4">2 lakhs</td><td>2610-3540</td><td rowspan="4">2.5 lakhs</td></tr>
<tr><td>2650-4000</td><td>2650-4000</td></tr>
<tr><td>2750-4400</td><td>2750-4400</td></tr>
<tr><td>3050-4590</td><td>3050-4590</td></tr>
<tr><td>4000-6000</td><td>3.25 lakhs</td><td>4000-6000</td><td>4.25 lakhs</td></tr>
<tr><td>5000-8000</td><td>4.00 lakhs</td><td>5000-8000</td><td>5.25 lakhs</td></tr>
<tr><td>5500-9000</td><td>4.50 lakhs</td><td>5500-9000</td><td>6.00 lakhs</td></tr>
<tr><td>6500-10500</td><td>5.50 lakhs</td><td>6500-10500</td><td>7.25 lakhs</td></tr>
<tr><td>8000-13500</td><td>6.50 lakhs</td><td>8000-13500</td><td>8.50 lakhs</td></tr>
<tr><td>14300-18300</td><td>7.50 lakhs</td><td>14300-18300</td><td>11.00 lakhs</td></tr>
</table>

(5)(c) The quantum of compensation payable to each employee/officer under this scheme shall be 15 days wages for every month of residual service available to such an employee / officer in reaching his / her superannuation in the services of the Society, subject to a ceiling limit of sixty months of residual service or the actual service shall available to him/her and which every is lower.	(5)(c) The quantum of compensation payable to each employee/officer under this scheme shall be 20 days wages for every month of residual service available to such an employee / officer in reaching his / her superannuation from the services of the Society, subject to a ceiling limit of sixty months of residual service or the actual service shall available to him/her and which every is lower.

47. Therefore, it is clear, apart from the fact that the Staff Retirement Benefit Fund Scheme which was started from 1st February 1991, was not as per the provisions of any statue, the Staff Voluntary Retirement Benefit Fund which has been in effect from 1998 and underwent many amendments by the Board of Management and ultimately resulted in starting of a Revised Voluntary Retirement Benefit Scheme 2004, have also not been

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framed as per any statue, except to say that the relevant byelaws enable the Board of Management to frame subsidiary scheme and as per the subsidiary scheme, the various regulations have been framed. Therefore, it is clear that the byelaw referred in the various proceedings of the first respondent appears to have nothing to do with the provisions of either the Multi State Cooperative Societies Act 1948, or the subsequent Act 2002.

48. In these circumstances, I do not think that the validity or otherwise the resolutions passed by the first respondent and also the amendments made to the subsidiary rules can be tested under the provisions of the Multi State Cooperative Societies Act 2002. As I have stated that on fact it is seen that the byelaws have never been framed as per the said Act and therefore, there are no statutory force or sanction either to the Staff Retirement Benefit Fund Scheme or to the Voluntary Retirement Scheme under the enhanced compensation principle.

49. In the teeth of the submissions made on behalf of the first respondent, it is relevant to point out some of the provisions of the Multi-State Co-operative Societies Act, 2002. Section 5 of the said Act contemplates two conditions for Multi-State Co-operatives Societies to be registered, which reads as follows:

> "5.Multi-State co-operative societies which may be registered-(1)No multi-State co-operative society shall be registered under this Act, unless-
>
> (a)its main objects are to serve the interests of members in more than one State; and
>
> (b)its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the co-operative principles.
>
> (2)The word "limited" or its equivalent in any Indian language shall be suffixed to the name of every multi-State co-operative society registered under this Act with limited liability."

On registration, the certificate of registration is issued under Section 8 of the Act. It is true that Section 10 of the Act contemplates the formulation of bye-laws of multi-State Co-operatives Societies consistent with the provisions of this Act. It is in respect of those societies registered under the said Act, in which bye-laws have been framed, as and when the amendment of bye-laws are to be made out, the same has to be registered so as to make such amendment valid. It is also stated under Section 11 of the said Act that such resolution for amendment shall be passed by two-third majority of the members present and voting at general meeting of the society. Section 11(1) and (2) of the Act reads as follows:

> "11.Amendment of bye-laws of a multi-State co-operative society-(1)No amendment of any bye-law of a multi-State co-operative society shall be valid, unless such amendment has been registered under this Act.
>
> (2)The amendment to the bye-laws of a multi-State co-operative society shall be made by a resolution passed by a two-

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third majority of the members present and voting at general meeting of the society."

Such amendment to bye-laws shall come into effect after it is registered. Section 12 of the said Act reads as follows:

"12.When amendment of bye-laws comes into force.-An amendment of the bye-laws of a multi-State co-operative society shall, unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered."

50. In this regard, it is relevant to find out the stand of the first respondent. While it is specifically admitted by the first respondent in the counter affidavit that the first respondent is a multi-State Co-operative Society deemed to have been registered under the Multi-State Co-operative Societies Act, 2002, it is their specific case that SRBF (Staff Retirement Benefit Fund) scheme and the monthly financial assistance given under the said Scheme does not give any statutory right on the part of the petitioners. The said scheme is a non-statutory one, created by the employer as a welfare scheme. Further, the voluntary retirement scheme by the amendment of subsidiary rules itself has been introduced by virtue of the powers given to the Board of Management under the subsidiary rules, especially regulation No.8(a) and (c). It is also relevant to point out the bye-law No.70 of the first respondent Society, by which the Staff Retirement Benefit Fund was created. It clearly shows that such fund shall be managed by a separate committee constituted for this purpose and the committee has been constituted with the Chairman and other members. It is also relevant to point out, at this stage, that the bye-law No.70 itself states that the contribution to the object and utilization of the fund is governed by such subsidiary regulations as framed by the Board of Directors from time to time in order to regulate this fund. It was based on the said powers conferred, the Board of Directors have framed subsidiary regulations. It is relevant to extract Bye-law No.70, which runs as follows:

"Bye-Law No.70:Staff Retirement Benefit Fund: The Board of Directors shall be competent to Constitute "The Staff Retirement Benefit Fund" with an equal contribution made by the employees of the Society and the Board of Management (Employer) which shall be managed by a separate committee constituted for this purpose. The subscription contributed by the employees shall be recovered from their salary at a rate fixed by the Committee with the consent of Staff Union, and the equal contribution by the employer shall be made from the funds of the Society.

The Management of the Fund shall vest in a committee consisting of:-

a) The Chairman of the Society shall be the Chairman of the Fund.
b) Two Members to be nominated from the Board of Directors.
c) Two members to be nominated by the employees union of the Society, from among themselves.
d) One member shall be elected from among the Share Holders at the Representative Assembly General Body meeting.

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e)The Chief Executive of the society shall be the Ex-officio member of the Fund.

The Contribution to, the objects and the utilization of the Fund shall be governed by such subsidiary regulations as may be framed by the Board of Directors from time to time in order to regulate this fund."

51. The subsidiary regulation No.8 provides for general provisions also to enable the Board of Management to frame additional rule not only for the purpose of administering the fund, but also for modifying, extending, altering or revoking any of the existing rules or scheme in consultation with the Staff Union. The said subsidiary regulation No.8 runs as follows:

"8)General Provision:

a)The Board of Management are competent to frame additional rules and regulations if necessary for administering the fund and also for modifying, extending, altering or revoking any of the existing rules/scheme in consultation with the Staff Union.

b)The SRBF Committee is empowered to operate Bank Account jointly by the Chief Executive of the Society and one office bearer of the Staff Union to be nominated by the General Secretary of the Staff Union."

It is not even the case of the petitioners that the said subsidiary regulations as well as the bye-laws have been framed as per the provisions of the Multi-State Co-operative Societies Act, 2002 and the same has undergone amendments which were never challenged. In such circumstances, considering the starting of Shareholders and Staff Welfare Fund in 1981 and subsequent commencement of Staff Retirement Benefit Fund Rule, 1998, till date when subsidiary regulations have been framed, they were not registered under the Act and were never questioned by the petitioners or others and it can never be said that there is any statutory sanction to the SRBF (Staff Retirement Benefit Fund) scheme framed under the bye law. In any event, the said bye law No.70 and the Staff Retirement Benefit Fund scheme created under the said bye law which has no statutory sanction and is purely contractual and therefore, no writ could be filed. Therefore, there is no question of convening general body meeting for the purpose of carrying out the amendments.

52. The next point, which arises for consideration is as to whether such a beneficial scheme like that of SRBF (Staff Retirement Benefit Fund) Scheme, under which contributions were recovered from the salaries of the employees, including that of the petitioners, can be wound up. As I have stated earlier, the subsidiary rules certainly enable the Board of Management to vary or to modify or even to cancel any such scheme and the said subsidiary regulations, which are in existence for many years, are not under challenge and in such circumstances, it cannot be said that there are no powers for the purpose of scrapping the scheme. As far as the scrapping of the scheme in cases where the benefit of the scheme has already been accrued to the beneficiaries like that of the petitioners, the point to be considered is as to whether by scrapping the scheme, any monetary loss

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should occur or as to whether the petitioners, who have voluntarily retired by submitting the applications for voluntary retirement, can be permitted to raise this issue, at this stage. The fact that the petitioners have retired on voluntary retirement scheme is not denied. It is also not denied that the petitioners have submitted their letters and applications. However, as per the contentions of the petitioners, it was due to compulsion, they were made to sign and many of them were not well-versed in English and therefore, it was not voluntary and the signs were made without knowing fully the contents and consequences of such letters. On the other hand, a reference to the typed set of papers filed on behalf of the first respondent would show that the letters were written in the handwriting of the petitioners and others in English. Therefore, on facts, it cannot be said that as if the petitioners were not aware of the consequences and the contents of the letters submitted by them. A reference to such letters would show that the petitioners have voluntarily sought for voluntary retirement specifically writing in their own handwriting, admitting that they are not eligible for monthly financial assistance and SRBF scheme. It is also on record that the petitioners, who are otherwise eligible under the SRBF scheme based on their contribution, have been paid much more amount than their eligibility, under the revised voluntary retirement scheme on account of scrapping of SRBF scheme. In this regard, it is relevant to extract the specific averments made by the first respondent in the counter affidavit, which runs as follows:

> "In regard to the averment made in para-25 that lot of mismanagement of the fund are taking place, it is to be submitted that they are totally false, baseless and are denied. It is true that when the scheme was introduced in the year 1991 it covered employees who retired prior to 1991 also which was done based on the request made by the then staff union which was also accepted by the management. The averment of the petitioner that he has been contributing towards the SRBF scheme from 1987 is false and are denied. The contributions made by him from 1991 to till January-2005 was Rs.15,782/-, 16,187/-, 13,708/- 48,113/-, 19,309/-, 16,438/-, 39,517/-, 21,293/- & 28,783/- only whereas the enhanced compensation paid to the petitioner under the Revised Voluntary Retirement Scheme on account of scrapping of SRBF Scheme is Rs.71,000/-, 71,000/-, 71,000/-, 1,13,427/-, 97,630/- 71,000/-, 1,26,030/-, 1,03,840/- & 1,19,370/- which would evidently establish that they had received much more than what he had actually contributed towards the fund."

53. As per the counter affidavit, the specific averments made on behalf of the first respondent is that the petitioners have received much more than what they had actually contributed towards the fund. It is seen that the person, who was eligible under the SRBF scheme to an extent of Rs.15,782/-, has been paid Rs.71,000/- and the person, who was eligible under SRBF Scheme to an extent of Rs.28,783/-, was paid Rs.1,19,370/-. The amounts have been received by the petitioners without any whisper and admittedly, the said amount is much more than their contribution made during the relevant point of time under SRBF Scheme. This specific

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contents in the counter affidavit of the first respondent is not denied by the petitioners anywhere either by reply affidavit or by any other means. In such circumstances, factually it is clear that in fact, the petitioners are benefitted by the compensation paid under voluntary retirement scheme. Therefore, I have no hesitation to come to the conclusion that the waiver by the petitioners is an intentional relinquishment, knowing that they would be entitled for better benefits under voluntary retirement scheme by way of compensation and it cannot be said that without knowing the consequences, the petitioners have relinquished their rights under SRBF scheme.

54. It is in this regard, the judgment of the Honourable Supreme Court reported in 2004 (13) SCC 792 (A.P.SRTC AND OTHERS VS. S.JAYARAM) relied upon by the learned Senior Counsel for the first respondent is relevant. While discussing about the concept of waiver, the Supreme Court has held as follows:

> "5....To constitute waiver there must be an intentional relinquishment of a known right or the voluntary relinquishment or abandonment of a known existing legal right or conduct such as warrants an inference of the relinquishment of a known right or privilege (Basheshar Nath v. CIT). Moreover, the circular itself stipulates the Corporation making an offer to the contractors for taking benefit of the policy decision and it is undisputed that the Corporation never made such an offer to the respondent. Inasmuch as there is a failure on the part of the Corporation to extend the benefit of the circular to the respondent, the Corporation cannot be permitted to take shelter behind its own wrong."

55. It is further clear that inasmuch as the right about which we are concerned, is not a fundamental right and the same is legal right and there is absolutely no bar for waiving the same. That apart, on such waiver, no matter of public policy is involved. The Honourable Supreme Court, while dealing with the same in LACHOO MAL VS. RADHYE SHYAM reported in AIR 1971 SC 2213, was pleased to hold as follows:

> "6.The general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanctions the non-observance of the statutory provision is "cuilibet licet renuntiare juri pro se introducto". (See Maxwell on Interpretation of Statutes, Eleventh Edition, pages 375 & 376). If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an act is intended to have a more extensive operation as a matter of public policy."

56. In a case reported in AIR 2003 SC 2189 (A.K.BINDAL AND ANOTHER

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VS. UNION OF INDIA AND OTHERS), while dealing with the similar voluntary retirement scheme and also the revision of pay scale in respect of the Fertilizer Corporation of India and Hindustan Fertilizer corporation and while holding that the non revision of pay scale does not ipso facto amount to the violation of fundamental right to livelihood, the Hon'ble Apex Court has held as follows:

> "33.This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as "Golden Handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.
>
> 34.The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two companies and are mature enough to weight the pros and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However they, in their wisdom thought that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion. In view of the fact that nearly ninety nine per cent of employees have availed of the VRS Scheme and have left the companies (FCI and HFC), the writ petition no longer survives and has become infructuous."

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57. In a recent judgment of the Honourable Apex Court reported in 2006 (3) CTC 844 (GYANENDRA SAHAY VS. M/S. TATA IRON AND STEEL CO. LTD.), while dealing with the voluntary retirement letter submitted in own handwriting, the Apex Court has held that after receiving the benefit, the employee cannot turn around and say that voluntary retirement was obtained by force. The relevant passage of the said order is as follows:

> "14.We have also perused the Memo of Appeal and other representation made by the appellant. The appellant has made a

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vague allegation that he was forced to take retirement. Neither he has made it specific nor had given the name of any officer who compelled him to writ the letter dated 1st April, 1995 or exercised undue and excessive pressure to sign the letter of premature/voluntary retirement. Though the Labour Court has come to the conclusion that the appellant was compelled to submit the letter of resignation, the same is not supported by any acceptable evidence. It is settled law that suspicion and doubt cannot take the place of evidence. No finding of fact can be given on mere doubt and suspicion or on the basis of baseless allegations. The appellant having written letter of voluntary retirement and after having accepted the retiral benefits without any protest cannot now turn around and say that he was compelled to submit his premature/voluntary retirement. The Appeal has absolutely no merits and we, therefore, have no hesitation to dismiss the same and to affirm the order passed by the learned Judges of the Division Bench of the High Court. No order as to costs."

58. In respect of the demand of the union to scrap the Staff Retirement Benefit Fund scheme and for a better Voluntary Retirement scheme with enhanced compensation, it is the specific case of the first respondent in the counter affidavit that the petitioners were signatory to the memorandum dated 18.11.2004. It is relevant to extract the relevant passage of the counter affidavit:-

"It is submitted that the Staff Union Vide para-5(page-2) of their letter dated 05.11.2004 and again vide their letter dated 18.11.2004 have specifically sought for stoppage of recoveries towards SRBF, scrapping of SRBF scheme and enhancement of compensation under VRS scheme to such of the persons who go on VRS in future. The petitioner is a signatory to the memorandum dated 18.11.2004 submitted by the Union."

This statement in the counter is not denied. Further, it is seen in page No.61 to 76 of the typed papers filed by the first respondent that the petitioners have in their own hand writing written and signed letters accepting that they are not eligible for any financial assistance after retirement. Therefore, it is not open to the petitioners to go back again their own letters. Further, it is also seen that such signatures are found in the memorandum submitted by the union to the first respondent dated 18.11.2004 addressed to the Chief Executive Officer of the first respondent, based on which the first respondent has appointed a subcommittee.

59. There is one another aspect also to be considered in this case. The petitioners, having retired admittedly as early as in the month of September, 2005, have not chosen to raise any dispute for a considerable period of 10 months, except by filing the present writ petitions in the month of July, 2006. Considering all the facts and circumstances of the case and also the established legal positions as mentioned above, I have no hesitation to come to the conclusion that it was knowing fully well that

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under the voluntary retirement scheme, the petitioners are given huge compensation they have waived the benefits under the SRBF (Staff Retirement Benefit Fund) scheme, and the same was consciously given and therefore, in my considered view, it is not open to the petitioners to raise objections now about the validity or otherwise of the resolution or amendment. The submission made by the learned counsel for the petitioners that letters were written in the atmosphere of threat of dismissal has no legal basis and factually untenable.

60. In view of all the reasons stated above, these writ petitions fail and are dismissed. However, there shall be no order as to the costs. Consequently, connected W.P.M.Ps.are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vvk/nbj

1. The Joint Registrar of Cooperative Societies,
   91, St. Mary's Road,
   Abiramapuram, Chennai 600 018.

2. The Central Registrar,
   Ministry of Agriculture and Cooperation,
   Krishi Bhavan, New Delhi 110 001.

+ 1 CC To Mr.A.Jenasenan, Advocate SR NO. 54675

+ 1 CC To Mr. D.Nagasaila, Advocate SR NO. 54692

mdr[co]
Gp/16.12.

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